

(f) If the representative does not file an answer within the 30-day time period, he or she does not have the right to present evidence, except as may be provided in §416.1565(g).

[45 FR 52106, Aug. 5, 1980, as amended at 56 FR 24132, May 29, 1991; 62 FR 38455, July 18, 1997; 63 FR 41418, Aug. 4, 1998; 71 FR 2878, Jan. 18, 2006]

**§416.1555 Withdrawing charges against a representative.**

The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us. When we consider withdrawing charges brought under §416.1545(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or agency that suspended, disbarred, or disqualified the representative, the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the Deputy Commissioner, or his or her designee, is so satisfied, the Deputy Commissioner, or his or her designee, will withdraw those charges. The action of the Deputy Commissioner, or his or her designee, regarding withdrawal of charges is solely that of the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, and is not reviewable, or subject to consideration in decisions made under §§416.1570 and 416.1590. If we withdraw the charges, we shall notify the representative by mail at his or her last known address.

[71 FR 2878, Jan. 18, 2006]

**§416.1565 Hearing on charges.**

(a) *Scheduling the hearing.* If the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

(2) No hearing officer shall hold a hearing in a case in which he or she is prejudiced or partial about any party, or has any interest in the matter.

(3) If the representative or any party to the hearing objects to the hearing officer who has been named to hold the hearing, we must be notified at the earliest opportunity. The hearing officer shall consider the objection(s) and either proceed with the hearing or withdraw from it.

(4) If the hearing officer withdraws from the hearing, another one will be named.

(5) If the hearing officer does not withdraw, the representative or any other person objecting may, after the hearing, present his or her objections to the Appeals Council explaining why he or she believes the hearing officer's decision should be revised or a new hearing held by another administrative law judge designated to act as a hearing officer.

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

(d) *Change of time and place for hearing.* (1) The hearing officer may change the time and place for the hearing. This may be done either on his or her own initiative, or at the request of the representative or the other party to the hearing.

(2) The hearing officer may adjourn or postpone the hearing.

(3) The hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

(4) The hearing officer shall give the representative and the other party to the hearing reasonable notice of any change in the time or place for the hearing, or of an adjournment or reopening of the hearing.

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

(f) *Subpoenas.* (1) The representative or the other party to the hearing may request the hearing officer to issue a subpoena for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents that are material to any matter being considered at the hearing. The hearing officer may, on his or her own, initiative, issue subpoenas for the same purposes when the action is reasonably necessary for the full presentation of the facts.

(2) The representative or the other party who wants a subpoena issued shall file a written request with the hearing officer. This must be done at least 5 days before the date set for the hearing. The request must name the documents to be produced, and describe the address or location in enough detail to permit the witnesses or documents to be found.

(3) The representative or the other party who wants a subpoena issued shall state in the request for a subpoena the material facts that he or she expects to establish by the witness or document, and why the facts could not be established by the use of other evidence which could be obtained without use of a subpoena.

(4) We will pay the cost of the issuance and the fees and mileage of any witness subpoenaed, as provided in section 205(d) of the Act.

(g) *Conduct of the hearing.* (1) The hearing officer shall make the hearing open to the representative, to the other party, and to any persons the hearing

officer or the parties consider necessary or proper. The hearing officer shall inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) If the representative did file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decision reopen the hearing to accept the additional evidence.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

(h) *Evidence.* The hearing officer may accept evidence at the hearing, even though it is not admissible under the rules of evidence that apply to Federal court procedure.

(i) *Witnesses.* Witnesses who testify at the hearing shall do so under oath or affirmation. Either the representative or a person representing him or her may question the witnesses. The other party and that party's representative must also be allowed to question the witnesses. The hearing officer may also ask questions as considered necessary, and shall rule upon any objection made by either party about whether any question is proper.

(j) *Oral and written summation.* (1) The hearing officer shall give the representative and the other party a reasonable time to present oral summation and to file briefs or other written statements about proposed findings of fact and conclusions of law if the parties request it.

(2) The party that files briefs or other written statements shall provide enough copies so that they may be

made available to any other party to the hearing who requests a copy.

(k) *Record of hearing.* In all cases, the hearing officer shall have a complete record of the proceedings at the hearing made.

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

(m) *Failure to appear.* If the representative or the other party to the hearing fails to appear after being notified of the time and place, the hearing officer may hold the hearing anyway so that the party present may offer evidence to sustain or rebut the charges. The hearing officer shall give the party who failed to appear an opportunity to show good cause for failure to appear. If the party fails to show good cause, he or she is considered to have waived the right to be present at the hearing. If the party shows good cause, the hearing officer may hold a supplemental hearing.

(n) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the representative.

(o) *Cost of transcript.* If the representative or the other party to a hearing requests a copy of the transcript of the hearing, the hearing officer will have it prepared and sent to the party upon payment of the cost, unless the payment is waived for good cause.

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#### §416.1570 Decision by hearing officer.

(a) *General.* (1) After the close of the hearing, the hearing officer shall issue a decision or certify the case to the Appeals Council. The decision must be in writing, will contain findings of fact and conclusions of law, and be based upon the evidence of record.

(2) In deciding whether an individual has been, by reason of misconduct, dis-

barred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the individual from acting as a representative before SSA. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether an individual should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension or disqualification. For purposes of determining whether an individual has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency—

(i) *Disqualified* refers to any action that prohibits an individual from participating in or appearing before a Federal program or agency, regardless of how long the prohibition lasts or the specific terminology used.

(ii) *Federal program* refers to any program established by an Act of Congress or administered by a Federal agency.

(iii) *Federal agency* refers to any authority of the executive branch of the Government of the United States.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she shall either—

(i) Suspend the representative for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision; or

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under §416.1599. Disqualification is the sole sanction available if